IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17385 of 2003

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MINOR JAGDISHNBHAI PRABHATBHAIGOHIL THRO.FATHER & GUARDIAN

Versus

STATE OF GUJARAT

Appearance:

MR GIRISH D CHAVDA for Petitioner No. 1

MR MR MENGDEY, AGP, for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 08/10/2004

ORAL JUDGEMENT

1. The petitioner herein has prayed for a direction to the respondent authority to make necessary correction in the date of birth in the school leaving certificate on the basis of the date of birth mentioned in the birth certificate issued by the competent authority and to

issue fresh certificate accordingly.

2. According to the petitioner, the correct date of birth of the petitioner is 6.5.1985. However, inadvertently his date of birth has been recorded as 30.4.1986 in the school leaving certificate. Since the concerned authority has rejected his request to correct the date of birth, he approached this Court by way of filing SCA No.8122/03 which was rejected on the ground that the petitioner has alternative remedy available under the law. The petitioner therefore filed LPA No.699/03. The Division Bench has while disposing of the LPA by order dated 11.8.2003 held as under:

> "4. ...Therefore, in view of Regulation 12-A Gujarat Secondary Education Regulations, 1974, school record could not have been corrected after the son of appellant had left the school. The only remedy of the appellant was to approach learned Magistrate, First Class, having jurisdiction in the matter for redressal of his grievance as provided under Section 13(3) of the Act. Therefore, the learned Single Judge was justified in concluding that the appellant has alternative remedy and that it was not necessary to entertain the petition filed under Article 226 of the Constitution. .."

4. The petitioner, therefore, approached the Judicial Magistrate, First Class, Viramgam by way of filing application No.202/2003 who by order dated 27.11.2003 rejected the said application.

5. In view of the above facts and circumstances, and in view of the orders of this Court as stated hereinabove, the Judicial Magistrate has committed an error in rejecting the application. As per the settled law the appropriate remedy for the petitioner is to approach the Judicial Magistrate, First Class, for redressal of his grievance.

6. In view of the above facts and circumstances the order dated 27.11.2003 passed by the Judicial Magistrate, First Class, Viramgam, is quashed and set aside and the Judicial Magistrate shall consider the case of the petitioner as per the observation made in LPA No.699/03, within a period of three weeks from the date of receipt of the writ of this Court. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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